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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/214,047	07/12/99	MULLER D	M-1492

HM22/1005

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EXAMINER	
SHAREH, S	
ART UNIT	**PAPER NUMBER**
1619	9

DATE MAILED: 10/05/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/214,047	Muller, Dieter
Examiner	**Group Art Unit**
Shahnam Sharareh	1619

☒ Responsive to communication(s) filed on *Jul 19, 2000*

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) *1-5* is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-5* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

DETAILED ACTION

Amendment filed on July 19, 2000 has been entered. Claims 4-5 are amended, claims 1-5 are pending.

Response to Amendment

1. The improper multiple dependent claim has been obviated.

2. The rejection of claim 1 under 35 U.S.C. 112, second paragraph, as being indefinite has been reconsidered and is withdrawn.

Claim 2 stand rejected under 35 U.S.C. 112, second paragraph. The metes and bounds of the claim is not clear. How is the memory characterized in a magnetic tape?

3. The rejection of claims 4 under 35 U.S.C. 112, second paragraph, as being incomplete is withdrawn in view of the amended claim 4.

4. Claim 5 stand rejected under 35 U.S.C. 112, second paragraph. It is not clear what is meant by "a predetermined amplification". The metes and bounds of the claim is not clear.

5. Claims 1-5 stand rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the

art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant argues that the methods used by Schoni et al, Int Arch Allergy Immunol.. 1997;12:238-246 ("the Swiss group") is different from the instant methods, therefore the comparison between them is worthless.

First, in reply Examiner states that the Swiss group provides the common understanding of the state of art in respect to the claimed invention. The similarity of their methods with the instant methods is not relevant to the analysis of 35 U.S.C. 112, first paragraph.

Second, as discussed in previous Office Action, the state of art is not well defined in respect to the instant invention, and the specification does not provide adequate enablement for the claimed therapeutic utility of the instant claimed invention.

Nevertheless, in previous Office Action, Examiner stated that even not considering the controversial and speculative nature of the instant claimed invention, the specification does not conform with the principals of bioresonance therapy and alternative medicine, and further it does not provide adequate teachings as how the instant magnetic tapes treats the pathological conditions of a patient. Again, not considering the controversial and speculative nature of the instant claimed invention, the state of prior art in alternative medicine utilizing bioresonance therapy employs a specific analyzing apparatus such as BIOCOM ™, wherein the waves from one part of the body are taken up by a brass electrode, and analyzed in a separator of said apparatus. Accordingly, during this process, the pathological waves are separated from the normal (healthy) waves and then said pathological waves are reversed electronically by said separator and finally

transmitted back to the patient by an exit electrode to produce its therapeutic effects (see Schoni et al, Int Arch Allergy Immunol.. 1997;12:238-246.) Hence, the bioenergy that is normalized during a treatment course of bioresonance therapy is actually generated within the body of the patient, and then corrected (filtered) by an external apparatus (see Schoni et al p.245, and specification p.5). Thus, there is no correlation between applying the bioresonance spectrum obtained from a medical compound or a tablet (a dead entity) in the form of electromagnetic memory on a magnetic tape, and the present state of bioresonance therapy, because the instant approach contrary to the principles of the bioresonance theory utilizes waves generated from a dead entity, not waves generated from the body of a human being. As stated in previous Office Action, there is no predictability in the art that said bioresonance spectrum obtained in the form of a magnetic tape can correct the pathological waves of a patient (as in accord with the bioresonance theory), neither is there any predictability in the mechanism of action of said spectrum on biological and cellular receptors. In addition, there is no prior knowledge in the art explaining the normal frequency of human's bioenergy, thus, one skilled in the art would not be able to determine the efficacy of such therapy without undue experimentation. Finally, the working examples do not provide any scientific guidance of how the instant pharmaceutical form exerts its pharmacologic benefits on the receptor system.

Moreover, Applicant has not provided any evidence as how the study described by the Swiss group is worthless. Claims 1-5 stand rejected.

6. Applicant's arguments in respect to the rejection made under 35 U.S.C. 102(b) as being anticipated by Berner et al DE 3419055 have been fully considered and are not found persuasive .

Applicant argues that Berner does not teach any recording process to produce the instant magnetic tape. Applicant's argument is not persuasive because it is not commensurate in scope of the claim 1. The instant claim 1 is not limited to a process for recording an electromagnetic spectrum. The claim 1 recites a biopharmaceutical form comprising bioresonance spectrum of a medical compound. Brenner discloses a magnetic foil sheet for biophysical therapy comprising plastic matrix and magnetic particles (see abstract.) The policy of the US PTO is to give pending claims their broadest reasonable interpretation. The instant open-ended claims comprise and do not exclude any components essential to the operability of the cited prior art patents. Accordingly, mineral salts are considered a medical compound. Therefore, Berner meets the limitations set forth in the instant claim. Claim 1 stand rejected.

7. Applicant's arguments in respect to the rejection made under 35 U.S.C. 102(b) as being anticipated by Whitson-Fischman US Patent 5,162,037 have been fully considered and are not found persuasive. Applicant argues that Whitson-Fischman does not teach any recording process to produce the instant magnetic tape. Applicant's argument is not persuasive because it is not commensurate in scope of the claim 1-3, 5. The instant claim 1-3, 5 are not limited to a process for recording an electromagnetic spectrum.

Whitson-Fischmann disclose methods of impregnating a topical patch comprising a homeopathic medicament and a magnetically permeable ingredient that is magnetized (abstract,

col 6 lines 35-68, col 7 lines 1-30) Whitson-Fischmann further disclose methods of using his patch by aligning it near a selected acupuncture point on the patient's skin (see col 9 lines 29-61, col 40 lines 16-40.) Thus, Whitson-Fischmann meets the limitations set forth in the instant claims. Claims 1-3, 5 stand rejected.

8. Applicant's arguments in respect to the rejection made under 35 U.S.C. 102(e) as being anticipated by Dillinger et al US Patent 5,830,140 have been fully considered and are not found persuasive. Claims 1, 4-5 stand rejected.

Applicant argues that the spectrum of Dillinger is in the form of digital signals unlike the instant claimed invention which is in the form of analog signals. Applicant's argument is not persuasive because it is not commensurate in scope of the claims. There instant pharmaceutical formulations are not limited to analog bioresonance spectrum.

Dillinger et al teach the use of a bioresonance apparatus to register the substance specific or body specific energetic information in the form of electromagnetic spectra to produce a homeopathic medicament composition (col 4 lines 40-45, claims 1, 5, 11.) Dillinger et al meet the limitations set forth in the instant claims. Claims 1, 4-5 stand rejected.

9. Applicant's arguments in respect to the rejection made under 35 U.S.C. 103(a) as being unpatentable over Dillinger et al US Patent 5,830,140 in view Whitson-Fischmann US Patent 5,162,037 have been fully considered and are not found persuasive. Claims 1-5 stand rejected.

Applicant argues that the combination of Dillinger et al and Whitson-Fischmann leads to a magnetic tape storing in the form of digital information not analog. Applicant's argument is not

persuasive because it is not commensurate in scope of the claims. There instant pharmaceutical formulations are not limited to analog bioresonance spectrum. Furthermore, in response to applicant's argument that the combination of Dillinger and Whitson-Fischmann makes digital magnetic tapes, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Claims 1-5 stand rejected.

New Matter

Following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claim 4 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Matter not in the original specification, claims, or drawings is considered new matter. The recitations of " input-resasonator" is not described in the specification, nor is there any indication in the examples teaching the putting of the medical compound in an input-reasonator. Accordingly, claim 4 is rejected.

Conclusion

11. No claims were allowed. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh, PharmD whose telephone number is (703) 306-5400. The examiner can normally be reached on Monday to Friday from 8:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. The fax phone number for this Group is 703-308-4556. Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-1235.

sjs, 9/28/2000

DIANA DUDASH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600